

(1998) 10 MAD CK 0086
In the Madras High Court

Sri Meenakshi Sundareswarar Devasthanam

APPELLANT

Vs

Palaniswamy and Others

RESPONDENT

Date of Decision : 21-10-1998

Acts Referred:

Citation : (1999) 1 MLJ 54

Hon'ble Judges : K. Govindarajan, J

Bench : Division Bench

Judgement

K. Govindarajan, J.—The petitioner-temple is the owner of the land in question. The petitioner filed the respective suits against the respondents to evict them from the said land. The respondents filed respective applications u/s 9 of the City Tenants Protection Act, and, the court below ordered the same. While ordering the respective petitions, the court below has directed the petitioner/plaintiff to sell the respective petition mentioned properties for a particular price, which would be deposited by the respective respondents/ tenants in the court within four months, and the petitioner/ plaintiff has been directed to obtain necessary sanction from the Commissioner, Hindu Religious and Charitable Endowment before disposing of the suit properties. The respondents/tenants admittedly deposited the amount in time and filed the execution petitions to get the sale deed executed as per the decree passed u/s 9 of the City Tenants Protection Act. The petitioner/ plaintiff opposed the said execution petitions on the ground that the sale deed cannot be executed without getting permission from the Commissioner, H.R. & C.E., as there is a specific clause in the decree to that effect. The court below accepting the said request of the respondents-tenants held that the petitioner/ plaintiff failed to get the permission from the Commissioner and failure to get such permission cannot be a ground to stop the execution of the sale deed, and directed the petitioner to execute the sale deed. Aggrieved against the same, the petitioner has filed the above revisions.

2. The learned Counsel appearing for the petitioner has submitted that in view of the specific clause in the decree to get permission from the Commissioner, Hindu

Religious and Charitable Endowment Board, before executing the sale deed, the court below is not correct in directing the petitioner to execute the sale deed, even without such permission. The learned Counsel relying on Act 2 of 1996 has submitted that the right of the petitioner cannot be enforced, in view of the said amendment to the Tamil Nadu City Tenants Protection Act, 1994.

3. In reply to the abovesaid submission, the learned Counsel appearing for the respondents-tenants has submitted that it is for the petitioner to get such permission from the Commissioner, H.R. & C.E. and failure to get such permission cannot be put against the respondents, which would nullify the decree obtained by the respondents tenants. According to him, the petitioner cannot take advantage of his own fault. The learned Counsel has further submitted, with respect to the amendment, that the same can be applicable only prospectively and not retrospectively. Moreover, according to him, certain cases are pending challenging the said amendment, which had been referred to the Full Bench. On that basis the learned Counsel has submitted that these revisions have to be adjourned till the decision of the Full Bench.

4. With respect to the first submission regarding the clause in the decree, I am not able to accept the case of the petitioner. The permission should be obtained only by the petitioner from the Commissioner, H.R. & C.E. and has to comply with the alleged procedure. If such a permission was not obtained it will not prevent the respondent-tenants from getting the sale deed executed on the ground that the Commissioner has not given such permission. As submitted by the learned Counsel for the respondents-tenants, the petitioner cannot take advantage of his own fault and contend that the decree cannot be executed. So, the court below is correct in rejecting the objection that has been raised by the petitioner.

5. Next, the learned Counsel appearing for the petitioner has relied on the Act 2 of 1996. He has also relied on the second portion of Section 3 of the said Act in support of his submission that any right accrued to the tenant in respect of any land, subsisting immediately before the date of notification of the Act ceased and determined and shall not be enforceable. The learned Counsel appearing for the respondent, relying on the first portion of the said Section has submitted that it can be only prospective, though this court has repeatedly pointed out that the learned Counsel for the petitioner was relying only on the second portion of the said section in support of his submission. To appreciate the rival contentions, it is necessary to appreciate the said section of the Act itself, which is as follows:

3. Certain pending proceedings to abate: Every proceeding instituted by a tenant in respect of any land owned by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion and pending before any court or other authority or officer on the date of the publication of this Act in the Tamil Nadu Government Gazette, shall, in so far as the proceeding relates to any matter falling within the scope of the principal Act, as amended by this Act, in respect of such land, abate, and all rights and privileges which may have accrued

to that tenant in respect of any such land and subsisting immediately before the said date shall in so far as such rights and privileges relate to any matter falling within the scope of the principal Act, as amended by this Act, cease and determine and shall not be enforceable:

Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date.

The second portion of the said section will clearly establish that the Act will apply retrospectively. The statute is very clear, precise and quite free from ambiguity. The intention of the legislature has been clearly and unequivocally expressed in the second portion of the said Section 3 of the Act 2 of 1996. Even from reading the proviso to the said Section 3 of the Act, it is clear that Section 3 shall not invalidate only suits or proceedings which has been executed or satisfied in full before the date of publication. So, it cannot be said that the said Act cannot be applicable retrospectively.

6. While considering the said issue, AR. Lakshmanan, J., in Radha Bai Vs. Sri Gangatheeswarar Devasthanam, , has held as follows:

Section 3 of the Amendment Act contemplates that every proceeding instituted by a tenant (petitioner herein) in respect of any land owned by any religious institution (respondent herein) or religious charity belonging to Hindu, Muslim, Christian or other religion and pending before any court or other authority or officer on the date of the publication of this Act in the Tamil Nadu Government Gazette, shall, abate and all the rights and privileges which may have accrued to the tenant in respect of any such land and subsisting immediately before the said date shall in so far as such rights and privileges relate to any matter falling within the scope of the principal Act (Act III of 1922) as amended by the present Act 2 of 1996 cease and determine and shall not be enforceable. Admittedly, the instant, proceeding was initiated by the petitioner herein, who claims to be a tenant in respect of the land owned by the religious institution, namely, the respondent temple. Section 3 of the Amendment Act also provides that the Amendment Act is applicable to any matter falling within the scope of the principal Act, as amended by Act 2 of 1996, in respect of the land belonging to the temple shall abate. However, the Amendment has made it clear that nothing contained in Section 3 of the Amendment Act shall be deemed to invalidate any suit or proceeding, in which the decree or order passed has been executed or satisfied in full before the said date.

It can also be seen from the statement of objects and reasons of the amended Act 2 of 1996, the amendment has been introduced with a view to enable such religious institutions and religious charities, to avoid forceable selling of the land leased out to the tenants under the Act. Since the decree obtained by the tenants are not yet executed or satisfied in full before the date of publication of the Act, the respondents tenants shall cease to have any right and privilege that

may accrue to him in respect of the land in question, and subsisting immediately before the amendment of the Act and the said right cannot be claimed or continued any further.

7. The learned Counsel appearing for the respondents with a view to get adjournment has submitted that the said Act has been challenged before the Full Bench and the cases are pending before the Full Bench and so these revisions have to be taken up after the disposal of the same. Such a request cannot be accepted. The learned Counsel has not brought to my notice that the respondents-tenants have filed such petition. Moreover, even if the Full Bench of this court accepts the case of the petitioners in those cases, even thereafter, the petitioners can enforce their right in accordance with law.

8. In view of the above, these revisions are allowed, as the decrees cannot be executed in view of Act 2 of 1996. No costs. Consequently, the connected C.M.Ps. are closed.